



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/781,579	01/09/97	GARDINER	B GONR9003HED/

HARRY J. MACEY
MORRISON AND FOERSTER
755 PAGE MILL ROAD
PALO ALTO CA 94304-1018

QM12/0203

EXAMINER

NGO, L

ART UNIT

PAPER NUMBER

3731

DATE MAILED:

02/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/781,579

Applicant(s)
Gardiner et al.

Examiner
Lien Ngo

Group Art Unit
3731



☒ Responsive to communication(s) filed on 11-3-99

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-76 is/are pending in the application.

Of the above, claim(s) 17, 20, 24, 25, 28, 32-35, 37-43, 50-68, and 76 is/are withdrawn from consideration.

☒ Claim(s) 1-16, 18, 19, 21-23, 26, 27, 29-31, 36, 44-49, and 69-73 is/are allowed.

☒ Claim(s) 74 and 75 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3731

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 74 and 75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 74, line 1, "made for" is vague and indefinite. It is unclear whether the applicant is claiming a method of making the fastener or the fastener itself. In line 2, "bending said first section and ..." is a recitation for a method of using a device, and "A second section into opposing orientation" is vague and indefinite. It is unclear what is a relationship between the second section and the first section in the fastener.

In claim 75, "a retaining member" is vague and indefinite. It is unclear which portion in the fastener is a retaining member. "is bent" is unclear for a verb of a retaining member or a portion or the pierced tissue or tissues and graft.

Claim Rejections - 35 USC § 102

3. Claims 74 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by Bregen (5,304,204). Bregen discloses, in figs. 9 and 10, a surgical fastener comprising a first section 110 in the right hand, a second section 110 in the left hand, and they bend in to opposing orientation,

Art Unit: 3731

said second section having more one planar surface (fig.1), and a retaining member 114 having a portion passing through the tissue and bending align with said second section.

Allowable Subject Matter

4. Claims 1-16, 18, 19, 21-23, 26, 27, 29-31, 36, 44-49, 69-73 are allowed, because the claims have been amended by the Attorney Jingming Cai for the Applicant to clearly distinguish the present invention over cited prior art reference.

Response to Arguments

5. Applicant's arguments with respect to claims 74 and 75 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3731

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Michael Buiz, can be reached at (703)308-0871. The Group FAX number is (703) 305-3590.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-0858.



Lien Ngo

January 28, 2000